

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

CINDY SUE McKEMY,

Plaintiff,

V.

**KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

Case No. 1:21CV00004

OPINION AND ORDER

JUDGE JAMES P. JONES

P. Heith Reynolds, WOLF, WILLIAMS, & REYNOLDS, Norton, Virginia, for Plaintiff; Antonia Adam, Special Assistant United States Attorney, OFFICE OF THE GENERAL COUNSEL, SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pennsylvania, for Defendant.

In this social security disability case, I accept the Report and Recommendation of the magistrate judge.

The plaintiff challenges the final decision of the Commissioner of Social Security (“Commissioner”) denying her claim for disability insurance benefits under certain provisions of the Social Security Act (“Act”). The action was referred to United States Magistrate Judge Pamela Meade Sargent to conduct appropriate proceedings. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). Magistrate Judge Sargent filed her 25-page Report and Recommendation (“Report”) on May 16, 2022, in which she recommended that the court affirm the Commissioner’s decision

denying benefits. On May 26, 2022, the plaintiff filed a written objection to the Report. The defendant filed a response to the objection on June 1, 2022. The objection is ripe for decision.

I must make a de novo determination of those portions of the report to which the plaintiff objects. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Under the Act, I must uphold the factual findings and final decision of the Commissioner if they are supported by substantial evidence and were reached through application of the correct legal standard. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987). “[T]he threshold for such evidentiary sufficiency is not high.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). Substantial evidence is “evidence which a reasoning mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966).

If such evidence exists, my inquiry is terminated and the Commissioner’s final decision must be affirmed. *See id.* But I may not “reflexively rubber-stamp an ALJ’s findings.” *Arakas v. Comm’r*, 983 F.3d 83, 95 (4th Cir. 2020) (internal quotation marks and citation omitted). “To pass muster, ALJs must build an accurate and logical bridge from the evidence to their conclusions.” *Id.* (internal quotation marks and citations omitted).

The plaintiff objects to the finding of the Report that the ALJ properly considered a prior ALJ decision rendered in 2012 regarding the plaintiff. Specifically, the plaintiff contends that the record fails to reflect improvements in the plaintiff's back and breathing impairments sufficient to support a deviation from the 2012 decision's residual functioning capacity finding.

The plaintiff raised these arguments in her Motion for Summary Judgment, and the magistrate judge thoroughly considered them. Based upon my careful consideration of this objection, the record, and the arguments of counsel, I agree with the magistrate judge that substantial evidence supported the ALJ's findings and that the ALJ's decision was in accord with relevant case precedent. The ALJ properly assessed the July 2012 decision and explained why he found that decision to be only partially persuasive based on the current evidence before him.

Accordingly, it is **ORDERED** as follows:

1. The plaintiff's Objection, ECF No. 19, is **DENIED**;
2. The magistrate judge's Report and Recommendations, ECF No. 18, is fully **ACCEPTED**;
3. The plaintiff's Motion for Summary Judgment, ECF No. 13, is **DENIED**;
4. The Commissioner's Motion for Summary Judgment, ECF No. 15, is **GRANTED**; and

5. A separate final judgment will be entered herewith.

ENTER: June 13, 2022

/s/ JAMES P. JONES
Senior United States District Judge